

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING THE
MALIBU PUBLIC FACILITIES AUTHORITY**

THIS AGREEMENT, dated as of _____, 2004 (the "Agreement"), by and between the CITY OF MALIBU, CALIFORNIA (the "City") and the SANTA MONICA COMMUNITY COLLEGE DISTRICT (the "District"), each a public instrumentality and political subdivision duly organized and existing under the Constitution and laws of the State of California (the "State"), individually called a "Member" and collectively called the "Members:"

WITNESSETH:

WHEREAS, each of the Members is authorized to borrow moneys, lease, purchase, receive and hold property necessary or convenient for the governmental and/or educational operations of such Member; and

WHEREAS, the acquisition of property and planning for and operation of facilities by each of the Members acting separately has resulted or would result in duplication of effort, inefficiencies in administration, and excessive costs in the planning for and acquisition and operation of such property and facilities, all of which, in the judgment of the Members, could be eliminated or reduced, to the substantial benefit of the citizens and taxpayers of each of the Members, if certain arrangements were to be made for the coordination of acquisition, improvement and operation, and such is the purpose of this Joint Exercise of Powers Agreement; and

WHEREAS, public agencies may, pursuant to Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State (hereinafter defined as the "Act") form joint exercise of powers authorities to exercise any powers common to the members thereof; and

WHEREAS, the Members propose that the Malibu Public Facilities Authority (the "Authority") be created hereunder and pursuant to the Act, in order to assist in the planning for and acquisition and operation of certain public facilities to be located within the City of Malibu, California, as more particularly described in Article II hereof (the "Facilities"), for the joint benefit of the Members and, particularly, of the residents and taxpayers of the City; and

WHEREAS, the Members wish to specify the procedures and parameters for their operation as a joint exercise of powers authority and for certain other matters related thereto;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Members do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article I shall, for the purpose hereof, have the meanings herein specified.

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State.

“Agreement” means this Joint Exercise of Powers Agreement.

“Associate Member” means any Public Agency admitted to the membership of the Authority under the provisions of Article VII hereof.

“Auditor and Treasurer” means the Director of Administrative Services of the City, *ex officio*, or such other person duly appointed by the Authority who shall be designated as Auditor and Treasurer of the Authority in Section 3.02, pursuant to Section 6505.6 of the Act.

“Authority” means the Malibu Public Facilities Authority created pursuant to this Agreement.

“Bonds” means any bonds, notes, certificates of participation or other securities or instruments issued or delivered by or on behalf of one or more Members; Bonds may be issued as Taxable or Tax-Exempt Bonds.

“Chairman” means the chairman of the Authority.

“Commission” means the Commission referred to in Section 2.04, which shall be the governing body of the Authority.

“Commissioners” means, collectively, the representatives of the Members appointed to the Commission pursuant to Section 2.04.

“Fiscal Year” means the period from July 1 to and including the immediately following June 30.

“Members” means, collectively, the original parties to this Agreement.

“Public Agency” means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Members.

“Secretary” means the secretary of the Authority.

“State” means the State of California.

“Vice Chairman” means the vice chairman of the Authority.

ARTICLE II

GENERAL PROVISIONS

Section 1.02. Recitals. The Members agree that the recitals to this Agreement are correct.

Section 1.03. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Members. Specifically, the Members wish to provide for the orderly planning for and acquisition and operation of new instructional opportunities in the District intended chiefly to accommodate students from the City to be housed in a facility not to exceed 25,000

assignable square feet (the “New Center”); certain related athletic fields and facilities (the “Center Support Facilities”); and necessary parking facilities related thereto (the “Parking Facilities” and, together with the New Center and the Center Support Facilities, the “District Facilities”), and a related and appurtenant clean water facility intended to resolve related environmental effects of the New Center (the “Clean Water Facility” and, together with the District Facilities, the “Facilities”), all to be located within the city limits of the City. The Members shall reach independent agreement as to the particulars of the appropriate properties, acquisition(s) and projects comprising the District Facilities, prior to the expenditures of proceeds from general obligation bonds (“Bond Proceeds”) if such bonds are approved at the District’s November 2, 2004 election and are subsequently issued on behalf of the District, a portion of which shall be applied in connection with projects to be located within the boundaries of, or adjacent to, the City. All expenditure of Bond Proceeds in connection with the District Facilities shall be subject to review by a Citizens’ Oversight Committee which reports to the public, as provided in Education Code Section 15278 *et seq.*

The following additional representations are hereby made by the parties in connection with the construction of the Facilities:

(a) prior to commencement of construction of the Facilities by the Authority, the District shall, at its own expense, conduct a comprehensive needs assessment with respect to the Facilities;

(b) no less than \$25,000,000 in Bond Proceeds shall be applied to the financing of the Facilities in the manner and for the purposes described above in this Section;

(c) during the development phase of any of the Facilities financed by Bond Proceeds, the District shall provide an opportunity for input from residents from the community and neighborhood in which the Facilities are to be located;

(d) the District Facilities will be owned by the District and used for the purposes described herein subject to determination of the construction and acquisition details pertaining thereto by the Board of the Authority. Any revenue or income derived from the operation of the facilities shall be income of the District and shall be applied to the support of District programs within the boundaries of the City, including those undertaken at the District Facilities; and

(e) None of the Bond Proceeds shall be used to purchase residential property within the City.

The method for exercise of the Members’ joint powers with regard to the Facilities is set forth in detail in Section 6.02 hereof.

Section 1.04. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the “Malibu Public Facilities Authority.” The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 1.05. Commission. The Authority shall be administered by a Commission of four (4) Commissioners. The Commissioners shall consist of two (2) Commissioners appointed by the City and two (2) Commissioners appointed by the District. The number of Commissioners may be changed by formal amendment of this Agreement. Commissioners appointed by the Members may, but need not be, elected officials of the Member making the appointment; provided, however, that neither Member shall appoint elected officials as Commissioners hereunder if, by so doing, any provision of the Brown Act with respect to the Member would be violated. Either Member may also provide by resolution of its governing board for the appointment of alternates to serve as Commissioners, in the event

that the primary Commissioners, or either of them, may be unavailable; notwithstanding the foregoing, at no time shall either Member seat more than two (2) Commissioners, taking into account any alternates so appointed. The Commission shall be called the "Commission of the Malibu Public Facilities Authority." All voting power of the Authority shall reside in the Commission.

Each Commissioner shall serve at the pleasure of the Member which appointed such Commissioner. Vacancies on the Commission shall be filled by the governing boards of the respective appointing Members, evidenced by delivery of a certified resolution of any such governing board, delivered to the Commission.

Section 1.06. Meetings of the Commission.

(a) **Regular Meetings.** The Commission shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each of the Members.

(b) **Special Meetings.** Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State.

(c) **Call, Notice and Conduct of Meetings.** All meetings of the Commission, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Brown Act (California Government Code sections 54950 *et seq.*). Such notices shall, at a minimum, be posted at the City Hall in Malibu, California, and at the Office of the Board of Trustees of the District in Santa Monica, California.

Section 1.07. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Commissioner and to the clerk or secretary of each of the Members.

Section 1.08. Voting. Each Commissioner shall have one vote.

Section 1.09. Quorum; Required Votes; Approvals. Commissioners holding a majority of the votes shall constitute a quorum for the transaction of business, except that (i) when a matter requires a Member to contribute moneys towards such expenditure then a quorum must include both Commissioners from the Member contributing the funds; and (ii) less than a quorum may adjourn or continue meetings from time to time. The affirmative votes of at least a majority of a quorum of the Commissioners shall be required to take any action by the Commission.

Section 1.10. Bylaws; Conflicts of Interest. The Commission may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary or advisable for the purposes hereof. The Commission, by resolution, shall adopt a Conflict of Interest Code as required by law.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 1.11. Chairman, Vice-Chairman and Secretary. The Commission shall elect a Chairman and Vice-Chairman from among the Commissioners, and shall appoint a Secretary who may, but need not, be a Commissioner. The officers shall perform the duties normal to said offices; and

() the Chairman shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Commission; and

() the Vice Chairman shall act, sign contracts and perform all of the Chairman's duties in the absence of the Chairman; and

() the Secretary shall countersign all contracts signed by the Chairman or Vice Chairman on behalf of the Authority, perform such other duties as may be imposed by the Commission and cause a copy of this Agreement to be filed with the Secretary of State of the State pursuant to the Act.

Section 1.12. Auditor and Treasurer. Pursuant to Section 6505.6 of the Act, the Director of Administrative Services of the City, *ex officio*, or such other person as may otherwise be duly appointed by the Authority pursuant to Section 6505.6 of the Act, is hereby designated as the Auditor and Treasurer of the Authority. The Auditor and Treasurer shall be the depository, shall have the custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority, if any. The Auditor and Treasurer shall be empowered to retain consultants and other professionals to perform any or all functions which may be delegated pursuant to the foregoing Sections of the Act, as and when necessary, and at commercially reasonable rates.

To the extent that either Member issues Bonds in order to finance any of the Facilities, it is understood and agreed that the proceeds of such Bonds shall not be subject to audit or approval by the Authority, inasmuch as they do not represent assets or obligations of the Authority, but of that Member.

Section 1.13. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.1 of the Act, the Auditor and Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 1.14. Legal Advisor and Bond Counsel. The Commission shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Commission.

Section 1.15. Other Consultants and Employees. The Commission shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement; *provided that*, in the case of consultants and contractors to be retained in connection with the issuance of any Bonds by a Member in order to finance any portion of the Facilities, the Commission shall neither appoint, employ or approve any such consultants. The Authority may elect to establish a Technical Advisory Committee (the "TAC") which shall comprise the City Manager of the City and the President of the Santa Monica Community College (the "College"), or such other persons agreed to by the Board of the Authority. The TAC shall provide administrative support and technical advice to the Authority.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a Member when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement, pursuant to Section 6513 of the Act.

None of the officers, agents, or employees directly employed by the Commission shall be deemed, by reason of their employment by the Commission, to be employed by any Member or, by reason of their employment by the Commission, to be subject to any of the requirements of the Members.

Section 1.16. Assistant Officers. The Commission may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Commissioner) as the Commission shall from time to time deem appropriate.

Section 1.17. Insurance. The Authority shall obtain insurance, in amounts and with such deductions as shall be typical for other joint powers authorities in the State of the same type, to cover the following: (a) general liability; and (b) errors and omissions as to Commissioners and employees, if any. Such insurance may be obtained through or under the auspices of either Member.

ARTICLE IV

POWERS

Section 1.18. General Powers. The Authority shall exercise in the manner herein provided the powers common to each of the Members and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04.

As provided in the Act, the Authority shall be a public entity separate from the Members. The Authority shall have the power to finance the purchase, construction, expansion, improvement or rehabilitation of any real or tangible property necessary or convenient for the operation of the Members, or any of them.

Section 1.19. All Powers under Act. The Authority shall have all of the powers provided in the Act, except for the powers to issue bonds, notes, certificates of participation or other obligations.

Section 1.20. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- () to make and enter into contracts;
- () to employ agents or employees;
- () to acquire, construct, manage, maintain or operate any buildings, works or improvements;
- () to acquire, hold or dispose of public capital facilities;
- () to sue and be sued in its own name;
- () to incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of any of the Members;
- () to apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State;

() to invest any money in its treasury pursuant to Section 6505.5 of the Act that is not required for the immediate needs of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as may other local agencies, pursuant to Section 53601 of the Government Code of the State;

() to carry out and enforce all the provisions of this Agreement;

() to purchase or lease real property; and

() to exercise any and all other powers as may be provided in the Act, except as provided in Section 4.02 above;

provided, however, that none of the foregoing acts involving the expenditure of any funds may be authorized without the affirmative vote of each Commissioner whose Member will be required to contribute moneys towards such expenditure, all in accordance with the provisions of Section 2.08.

Section 1.21. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act, and, except as otherwise set forth in the Act, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon the City or the District in the exercise of similar powers. Neither the District nor the Authority shall unilaterally override the City's land use authority for any project undertaken in accordance with the purposes of this Agreement and such projects shall be subject to the City's zoning and land use requirements.

Section 1.22. Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Commissioners or Members.

Section 1.23. No Restrictions on Powers of Members Implied. Notwithstanding anything contained herein to the contrary, the participation by any or all of the Members in the Authority shall not have the effect of circumscribing, limiting or restricting in any fashion or manner whatsoever the powers granted to and exercised by each Member as a public instrumentality of the State; *provided* that neither the District nor the Authority may apply Bond Proceeds to purchase residential property within the City, by eminent domain or otherwise.

ARTICLE V

MEETINGS AND PROCEDURES; CREDIT TO MEMBERS

Section 1.24. Assumption of Responsibilities by the Authority. As soon as practicable after the date of execution of this Agreement, the Commissioners shall give notice (in the manner required by Section 2.05) of the organizational meeting of the Commission. At said meeting the Commission shall provide for its regular meetings as required by Section 2.05 and elect a Chairman, Vice-Chairman and the Secretary.

Section 1.25. Delegation of Powers. Each of the Members hereby delegates to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, such real or tangible property necessary or convenient to fulfill the purposes contained in Section 2.02 of this Agreement.

Section 1.26. Credit to Members. All accounts or funds created and established pursuant to any trust agreement or indenture to which the Authority is a party, and any interest earned or

accrued thereon, shall inure to the benefit of the respective Members for which such funds or accounts were created.

ARTICLE VI

CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

Section 1.27. Contributions. The Members may in the appropriate circumstances when required hereunder:

- () make contributions from their treasuries for the purposes set forth herein,
- () make payments of public funds to defray the cost of such purposes,
- () make advances of public funds for such purposes, such advances to be repaid as provided herein, or
- () use their personnel, equipment or property in lieu of other contributions or advances.

The provisions of Section 6513 of the Government Code of the State are hereby incorporated into this Agreement.

Section 1.28. Agreements as to Joint Use Facilities. The Members understand and agree that the District has requested of its voters the right to issue \$135,000,000 principal amount of its general obligation bonds to be used for various capital projects to benefit the District, which will be taken up by the voters and considered at the November 2, 2004, election (the "Election"). The District and the City have identified certain parcels of land within the boundaries of the City that might be appropriate for the Facilities, and they wish to provide for certain arrangements between them for the acquisition, improvement and operation of same.

a. **Land Purchases by District from Bond Proceeds.** The District intends to apply certain proceeds from its issuance of the Bonds approved at the Election to the purchase of one or more parcels of land (collectively, the "Sites") suitable for the construction of the Facilities. The Members understand and agree that, unless the City shall have contributed moneys described in the paragraph below to the acquisition price of the Sites, it shall have no legal right, title and interest in the Sites, except as may be afforded under paragraph c below.

b. **Land Purchases and Improvements by City from Grants and Other Third-Party Sources.** The City may, from time to time, apply for and receive moneys from State, federal or other persons or agencies which are available for contribution to the cost of the Sites and/or construction and improvement of the Clean Water Facility. The City covenants and agrees to apply any such moneys received by the City to supplement the proceeds of Bonds of the District for such purposes. The Members understand and agree that, if the City shall have contributed moneys described herein to the acquisition of the Sites and/or the construction of the Clean Water Facility, the District shall cooperate with the City in effecting a division of the parcels comprising the Site so that any City ownership or leasehold interest is accurately reflected on the books of record maintained by the Recorder of the County of Los Angeles.

c. **Development of Joint Use Facilities.** The Members understand and agree that without the construction of the Clean Water Facility on one of the Sites, the New Center and the Center

Support Facilities would unduly stress the City environment, and especially the City's ability to treat wastewater, and the District would be unwilling to construct them inside City limits. Accordingly, the District covenants and agrees that, whether or not the City is able to provide moneys as described in paragraph b above, the District will acquire at least one Site that is capable of supporting both the New Center and the Clean Water Facility, with the Center Support Facilities to be located on an adjacent or a separate Site or Sites to be identified. The District will, following its acquisition of the main Site, execute easements or similar documents sufficient to allow the City to construct the Clean Water Facility thereon. The remaining land surrounding the buildings and parking lots or structures constructed or improved by the District as the New Center shall be used jointly by the City and the District as green space and as facilities for the evaporation and other landscaped treatment of water provided by the Clean Water Facility.

d. Rights of Members to Operate and Improve Separately Owned Facilities. The Members understand and agree that, notwithstanding the aforementioned joint use, the District shall have no responsibility for or control over the operation of the Clean Water Facility and the City shall have no responsibility for or control over the operation of the New Center or the Center Support Facilities. This Agreement is not intended to nor does it purport to affect, alter or control the operations by the City or the District of any of their properties or enterprises, including their respective portions of the Facilities.

Section 1.29. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Auditor and Treasurer of Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority in the hands of a trustee or the Auditor and Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Auditor and Treasurer of the Authority, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any fiscal agency or trust agreement or indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said fiscal agency or trust agreement or indenture. Said trustee may be given such duties in said trust agreement or indenture as may be desirable to carry out this Agreement.

Section 1.30. Funds. Subject to the applicable provisions of any fiscal agency or trust agreement or indenture which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Auditor and Treasurer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 1.31. Annual Budget and Administrative Expenses. The Commission shall adopt a budget for administrative expenses annually prior to July 1 of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the Members on a pro rata basis to be calculated by the Members, taking into account the relative value and operational costs of each such Member in connection with the properties being acquired and the projects being constructed pursuant to this Agreement.

Section 1.32. Indemnification. The Authority shall indemnify, defend and save harmless the Members, their officers, agents and employees, from and against any and all claims and losses whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any person, firm or corporation, for damage, injury or death arising out of or connected with the Authority's

or its officers', agents' or employees' acts or omissions under this Agreement. Each Member agrees to defend, indemnify and hold harmless each other Member from any liability, claim or judgment for injury or damages caused by a negligent or wrongful act or omission of an agent, officer, or employee of the indemnifying Member which occurs from or arises out of the performance of this Agreement.

ARTICLE VII

ASSOCIATE MEMBERSHIP AGREEMENTS

Section 1.33. Power to Enter into Associate Membership Agreements. In addition to those powers specified in this Agreement, the Authority all have the power to enter into Associate Membership Agreements with any Public Agency upon the approval thereof by two-thirds of the Commissioners.

Section 1.34. Contents of Associate Membership Agreements. Each Associate Membership Agreement shall:

- () State that the Public Agency is an Associate Member of the Authority;
- () Specify that the purpose of the Associate Membership Agreement is to facilitate the financing of the purchase, construction, expansion, improvement or rehabilitation by the Public Agency of capital facilities necessary for the governmental operation of the Public Agency at a cost (taking into account the cost of such financing) which is less than would be possible if the Public Agency were to acquire the capital facilities independently of the Authority;
- () Restrict the powers of the Public Agency with respect to the Authority to those enumerated in this Article VII;
- () Specify that the Public Agency shall not have the power to: (i) vote on any action to be taken by the Authority; or (ii) become an officer of the Authority or a Commissioner; and
- () Specify the fees, if any, to be charged the Public Agency for its participation in financings of the Authority.

Section 1.35. Approval of Associate Membership Agreements. In determining whether to approve an Associate Membership Agreement with a Public Agency which proposes to be an Associate Member, the Commissioners may take into account any criteria deemed appropriate to the Commissioners, including but not limited to the financial well-being of such Public Agency and the nature of the public capital facility or the working capital requirements which such Public Agency proposes to finance.

ARTICLE VIII

TERM

Section 1.36. Term. This Agreement shall become effective as of the date of execution hereof by the parties hereto, and shall continue in full force and effect until terminated by action of the governing body of one or both Members; provided, however, that this Agreement shall not terminate so long as any obligations of the Members and any Bonds issued pursuant hereto and the interest thereon shall not have been paid in full or adequate provision for such payment shall not have been made as set forth in the proceedings for the issuance thereof; provided, further that this Agreement shall terminate and

the Authority shall be dissolved on such date as the Board of Trustees of the District enters a report onto its Minutes of the failure of the Election to approve the Bonds. The District covenants and agrees to provide written notice to the City of any such failure. Following the date the Authority is established, if at any time a Member withdraws from the Authority, then the Authority shall dissolve and this Agreement shall terminate in accordance with this Section, provided, however, that once the Authority has agreed upon a Site, this Agreement shall not be terminated unless by mutual agreement of the Members. Any such a termination shall be noticed to the Secretary of State by the withdrawing Member.

Section 1.37. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 1.38. Notices. Notices to the Authority hereunder shall be in writing and shall be sufficient if delivered to:

Chair
Malibu Public Facilities Authority
c/o City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265
Attention: City Manager

Notices to the Members shall be given as follows:

If to the City of Malibu:

Chair
Malibu Public Facilities Authority
c/o City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265
Attention: City Manager

If to the District:

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405
Attention: Superintendent/President

Section 1.39. Section Headings. All section headings in this Agreement are for convenience of reference only and are not be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 1.40. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 1.41. Law Governing. This Agreement is made in the State under the Constitution and laws of the State and such laws, as are applicable to contracts made and performed in the State, shall govern the interpretation and administration hereof.

Section 1.42. Amendments. This Agreement may be amended at any time, or from time to time, except as may be limited by applicable regulations or laws of any jurisdiction having cognizance hereof, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 1.43. Enforcement of Agreement. The Authority is hereby authorized to take any or all legal equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement. Venue shall be in the Superior Courts of the County of Los Angeles, California.

Section 1.44. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 1.45. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Members. Neither of the Members may assign any right or obligation hereunder without the written consent of the other Member.

Section 1.46. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year set opposite the name of each of the parties.

CITY OF MALIBU, CALIFORNIA

Executed: _____, 2004

By: _____
[Mayor]

APPROVED AS TO FORM:

CITY ATTORNEY OF THE CITY OF
MALIBU

By: _____

**SANTA MONICA COMMUNITY COLLEGE
DISTRICT**

Executed: _____, 2004

By: _____
President